

1 **D. Hunter**2 1275 Lincoln Ave., Ste #1
3 St. Paul, MN 55105
4 612-395-9111(F)5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF ILLINOIS**7 D. W. HUNTER, an Individual,
8 LARNELL EVANS. JR., an Individual
9 FOR THE ESTATE OF ANNA
10 SHORT HARRINGTON, an Individual
11 ("AUNT JEMIMA")

12 PLAINTIFFS'

13 vs.

14 PEPSICO Inc., a Corporations, JANET
15 LYNN SILVERBERG, an Individual,
16 THE QUAKER OATS COMPANY, a
17 Corporation, PINNACLE FOODS
18 GROUP, LLC, a Corporation, and
19 DOES 1 through 25, inclusive,
20 DEFENDANTS.21 Judge: Edmond E. Chang
22 Case NO. 14CV6011,23 **MEMORANDUM IN SUPPORT OF
24 OBJECTION TO PEPSICO,
25 QUAKER OATS, AND PINNACLE
26 MOTION TO DISMISS DOCKET
27 NO. 46 PURSUANT TO
28 VIOLATIONS OF 15 U.S.C.
29 §1051(B), 18 U.S.C. § 1001**30 **FILED**

31 OCT 30 2014 ✓

32 THOMAS G. BRUTON
33 CLERK, U.S. DISTRICT COURT34 **MEMORANDUM OF LAW**35 Portraits and Pictures: Courts have construed the portrait/picture provisions of the statute
36 somewhat broadly, to include "**any recognizable likeness, not just an actual photograph.**"
37 Burck v. Mars, Inc., 571 F. Supp. 2d 446, 451 (S.D.N.Y. 2008). The statute covers a
38 representation if it "**conveys the essence and likeness of an individual,**" even if the
39 representation is not completely photo-realistic, but in the case now before the court the
40 Conspirators utilized the Harrington actual likenesses. Onassis v. Christian Dior-New York,
41 472 N.Y.S. 2d 254, 261 (N.Y. Sup. Ct. 1984). Sculptures, mannequins, and other three-
42 dimensional "likenesses" may be covered. Young v. Greneker Studios, 26 N.Y.S. 2d 357 (N.Y.
43 Sup. Ct. 1941). (Exhs. 110, 111, 112, 113, 114, 115, 116, 201)44 **Elements of a Claim for Unlawful Use of Name or Likeness**

A plaintiff must establish **three elements** to hold someone liable for **unlawful use** of name or **likeness**:

1. Use of a Protected Attribute: The plaintiff asserts and alleges the defendant used Anna Short Harrington's likeness, skin tone, hair color, other aspect of her identity that is protected by the law before her death. This law protects certain other personal attributes, including but not limited to the "Red Bandana".

2. For an Exploitative Purpose: The plaintiff asserts and alleges the defendants used Great Grandma Anna Short Harrington, Aunt Deloris Hoffman, Aunt Laura Mae Sizemore and Grandma Olivia Hunter's name, likeness, and wrongfully procured 64 recipes and 22 complete menus including but not limited to other personal attributes for commercial or other exploitative purposes.

3. No Consent: The plaintiff's assert and allege they checked the USPTO and there is not a consent form filed for Patent Reg. No. 71385940 and/or Reg. No. 1697862.



IMPLICATIONS TO WILLFUL FALSE STATEMENTS

(765 ILCS 1075/30)

Sec. 30. Limitations regarding use of an individual's identity.

1 (a) A person may not use an individual's identity for commercial purposes during the
2 individual's lifetime without having obtained previous written consent from the appropriate
3 person or persons specified in Section 20 of this Act or their authorized representative.

4

5 (b) If an individual's **death occurs after the effective date of this Act**, a person may not
6 use that individual's identity for commercial purposes for 50 years after the date of the
7 individual's death **without having obtained previous written consent from the appropriate**
8 **person or persons specified in Section 20 of this Act.** (Source: P.A. 90-747, eff. 1-1-99.)

9 <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2241&ChapterID=62>

10

11 § 51. Action for injunction and for damages. Any person whose name **portrait, picture**
12 or voice is used within this state for advertising purposes or for the purposes of trade
13 **without the written consent** first obtained as above provided may maintain an
14 **equitable action** in the supreme court of this state against the person, firm or
15 **corporation** (i.e. Quaker Oats) so using his/her name, **portrait, picture or voice**, to
16 prevent and restrain the use thereof; and may also sue and recover damages for any
17 injuries sustained by reason of such use and if the defendant shall have **knowingly**
18 **used** such person's name, portrait, picture or voice in such manner as is forbidden or
19 declared to be unlawful by section fifty of this article, the jury, in its discretion, may
20 award exemplary damages. But nothing contained in this article shall be so construed
21 as to prevent any person, firm or corporation from selling or otherwise transferring
22 any material containing such name, portrait, picture or voice in whatever medium to
23 any user of such name, portrait, picture or voice, or to any third party for sale or transfer
24 directly or indirectly to such a user, for use in a manner lawful under this article;
25 nothing contained in this article shall be so construed as to prevent any person, firm
26 or corporation, practicing the profession of photography, from exhibiting in or about
27 his or its establishment specimens of the work of such establishment, unless the same is
28 continued by such person, firm or corporation after written notice objecting thereto
has been given by the person portrayed; and nothing contained in this article shall be
so construed as to prevent any person, firm or corporation from using the name, portrait,
picture or voice of any manufacturer or dealer in connection with the goods, wares
and merchandise manufactured, produced or dealt in by him which he has sold or
disposed of with such name, portrait, picture or voice used in connection therewith; or
from using the name, portrait, picture or voice of any author, composer or artist in
connection with his literary, musical or artistic production which he has sold or
disposed of with such name, portrait, picture or voice used in connection therewith.
Nothing contained in this section shall be construed to prohibit the copyright owner of a
sound recording from disposing of, dealing in, licensing or selling that sound recording
to any party, if the right to dispose of, deal in, license or sell such sound recording has

been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

Petrella v. Metro-Goldwyn-Mayer, Inc.

Case No. 12-1315

Quaker Oats and PepsiCo Attorneys has conspired to mislead the court and the USPTO concerning collateral estoppel rules, and the Latches Doctrine, that do not trump the recent U.S. Supreme Court Decision concerning **Petrella vs. MGM**. ‘MGM is concerned that evidence needed or useful to defend against liability will be **lost during a copyright owner’s inaction**. ‘**Congress must have been aware** that the passage of time and the author’s death could cause evidentiary issues **when it provided for reversionary renewal rights** that an **author’s heirs can exercise long after a work was written and copyrighted**. Moreover, because a copyright plaintiff bears the burden of proving infringement, any hindrance caused by evidence unavailability is as likely to affect plaintiffs as defendants. The need for extrinsic evidence is also reduced by the “**registration mechanism**,” (“Emphasis Added” under which both the certificate and the original **work must be on file with the Copyright Office (i.e. Trademark Office) before a copyright owner can sue for infringement**.” “Careless observance by an agency of its own administrative process weakens its effectiveness in the eyes of the public because it exposes the possibility of “**FAVORITISM**” and of “**INCONSISTENT**” application of the law. In the case now before the Court, rule 60 Fed.R.Civ.P. permits the judiciary to impose disciplinary measures from for judgments and orders for certain reason. Among those reasons are (b)(1) mistake inadvertence, surprise, or inexcusable neglect; and (b)(3) actual fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. <http://supreme.justia.com/cases/federal/us/572/12-1315/>



LaVerne T. Thompson, USPTO Examining Attorney, Law Ofc. 116

Violations 15 U.S.C. §1051(B) & 37 C.F.R. Secs. §2.34(a)(1)(i).

3 "The undersigned, being hereby "WARNED" ("emphasis added") that "WIFUL
4 FLASE STATEMENTS" and the like so made are "PUNISHABLE" by fine or
5 "IMPRISONMENT," or both, under 18 U.S.C. §1001." "When the Applicant seeks a
6 registration under Section 1(a) of the trademark Act, the mark "WAS IN USE IN
7 COMMERCE" (Emphasis added") on or in connection with goods or services listed in the
8 application as the application filing date." 37 C.F.R. Secs. §2.34(a)(1)(i). The Applicant, had to
9 agree that "willful false statements" and the like will jeopardize the validity of the application
10 or any resulting registration, declares that he/she is "properly authorized" to "execute this
11 application" on behalf of the applicant; he/she believes that applicant to be the owner of the
12 trademark/service mark sought to be registered, or, if the application is being filed under 15
13 U.S.C. §1051(B), he/she believes applicant to be ENTITLED (Emphasis Added) to use such
14 mark in commerce; to the best of his/her knowledge and belief no other person, firm,
15 corporation, or association has the right to use the mark in commerce, either in the
16 identical form thereof or in such "near resemblance" (emphasis added thereto as to be
17 likely, when used on or in connection with the goods/services of such other person, to cause
18 confusion, or to cause mistake, or to deceive, that if the original application was submitted
19 signed, that all statements in the original application was submitted unsigned, that all statement
20 in the original application and this submission made of the "declaration" signer's
21 knowledge are true; and all statements in the original application and this submission
22 made on information and belief are believed to be true."

23 Due to the cited law, the Senior Legal Counsel for Quaker Oats in 1936 refused “**execute**” his
24 name on the U.S.P.T.O. Applications **Reg. No. 71385940**, and forced Quaker Oats President to
25 “Execute” his name instead.

“Fraud upon the court is fraud which is directed to the **judicial machinery** itself and is not fraud between the parties or fraudulent documents, false statements or perjury... ‘Fraud upon the court’ has been defined by the 7th Circuit Court of Appeals to “embrace that species of Fraud which does, or attempts to, **defile the court itself**, or is a fraud perpetrated by officers of

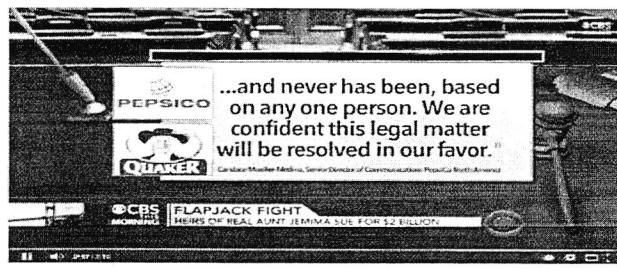
1 the court so that the judicial machinery cannot perform in the usual manner its impartial task of
 2 adjudging cases that are presented for adjudication.” Kenner v. C.I.R., 387 F.3d 689 (1968); 7
 3 Moore’s Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated “a decision
 4 produced by Fraud upon the court is not in essence a decision at all, and never becomes final.”

5 It is also clear in Trademark law and well-settled that any attempt to commit “Fraud
 6 upon the U.S.P.T.O. and/or any Court” vitiates the entire proceeding. *The People of the State
 7 of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) (“The maxim that fraud
 8 vitiates every transaction into which it enters applies to orders and judgments, as well as,
 9 to contracts and other transactions.”); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316;
 10 168 N.E. 259 (1929) (“The maxim that fraud vitiates every transaction into which it enters...”;
 11 In re Village of Willowbrook, 37 Ill.App.2d 393 (162) (“It is axiomatic that fraud vitiates
 12 everything.”); Dunham v. Dunham, 57 Ill. App. 475 (1894), affirmed 162 Ill. 589 (1896);
 13 Skelly Oil Co. V. Universal Oil Products Co., 338 Ill. App. 79, 86 N.E. 2d 875, 883-4 (1949);
 14 Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

15 Under Minnesota, New York, and Illinois concerning Federal law, when an officer of the
 16 court (i.e. Attorney) commits “Fraud upon the court,” the orders and judgment of that court
 17 become void, of no legal force or effect.

18 Such misconduct becomes a violation of the plaintiffs Fourth Amendment Rights. Id. At
 19 12. Citing City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988). Material fact issues
 20 regarding Defendant’s summary judgment of bad faith, fraud and conspiracy should have
 21 precluded summary judgment because the Defendants failed to attach a Affidavit to the Rule 12
 22 motion. No Rule 12 motion can be granted by a moving defendant without an affidavit to
 23 extinguish the Plaintiff affidavit that become a “Crystallized Issue” within 30 days of the
 24 defendant being served with a summons and complaint.

LIBEL



1 "The image symbolizes a sense of caring, warmth, hospitality and comfort and is
2 neither based on, nor meant to depict any one person," according to a statement
3 from Quaker Oats, a subsidiary of PepsiCo . "While we cannot discuss the details
4 of pending litigation, we do not believe there is any merit to this lawsuit."

4 <http://www.foxnews.com/leisure/2014/10/07/another-aunt-jemima-family-seeks-dough->
5 [from-pancake-proceeds/](#)

6 All **true crimes** require two elements. The first is the prohibited act, referred to in law as
7 "*actus reus*". To be a crime this act has to be accompanied by "*mens rea*," criminal intent. The
8 U.S. Supreme Court said in Morissette vs. U.S. that criminal intent involves an "**evil – meaning**
9 **mind,**" variously described with respect to different crimes as "**intentional**" **knowing,**
10 **fraudulent, malicious etc.** Each crime has different *mens rea*. For example the *mens rea* for
11 murder is "**malice aforethought.**" For there to be a crime, the commission of prohibited act and
12 criminal intent (*mens rea*) have to concur in time.

13 In 1963 in an Illinois case, People v. Coolidge it was found "since every Sane Man such
14 as a "Seasoned Attorney" is presumed to intend all the natural and probable consequences
15 flowing from his/her **own deliberate act**, it follows that if one willfully does an act, the natural
16 tendency of which is to destroy another's life, the irresistible conclusion is that the destruction
17 of such other **persons life was intended.**" It can also be premeditated intend to do an act
18 "**without regard for the life and safety of others,**" which is implied malice. Malice does not
19 necessarily imply ill-will, spite, hatred or hostility by the perpetrator toward the bereaved.
20 **Malice** is a state of mind showing a heart [**not regardful**] of the life and safety of
21 **others...**(i.e. Grandma Olivia Hunter)

22 The Trademark Trial and Appeal Board have synthesized this standard to three
23 elements: Statements that are (1) "**false,**" (2) "**material,**" and (3) "**made knowingly.**"
24 *Mister Leonard Inc. v. Jacques Leonard Couture Inc.*, 23 U.S.P.Q.2d 1064, 1066
25 (T.T.A.B. 1992)(emphasis in original)."The specific or actual intent of [opposer's
26 declarants] is not material to the question of fraud or deception. . . . [F]raud or deception
27 occurs when an applicant or registrant makes a false material representation that the
28 applicant or registrant **knew or should** have known was **false.**" Registrant and its

1 attorney shared the duty to ensure the accuracy of the application and the truth of its
2 statements, pursuant to 18 U.S.C. §§§§2, 3, 4, and 1001.

3 Malice can also be defined as a condition of mind which prompts a person to do
4 willfully, that is, on purpose, without adequate justification or excuse, a wrongful act whose
5 **foreseeable consequences is serious bodily injury to another.** (i.e. 11/28/13 - Constructive
6 Notice of Sister L. Davis need of a Life-saving Surgery) Surely, the Conspirator(s) knew or
7 should have known failure to timely pay an equitable fair share of royalties pending the matter
8 concerning the heirs lawful rights of ownership would manifest physical injury to the Great
9 Granddaughter of Anna Short Harrington and Olivia Hunter. Whether or not the perpetrators
10 intent or state of mind committed acts that concurred in time rest only as a matter for a jury trial
11 to adjudicate the "**Mosaic of Guilt**" or "**Facts**".

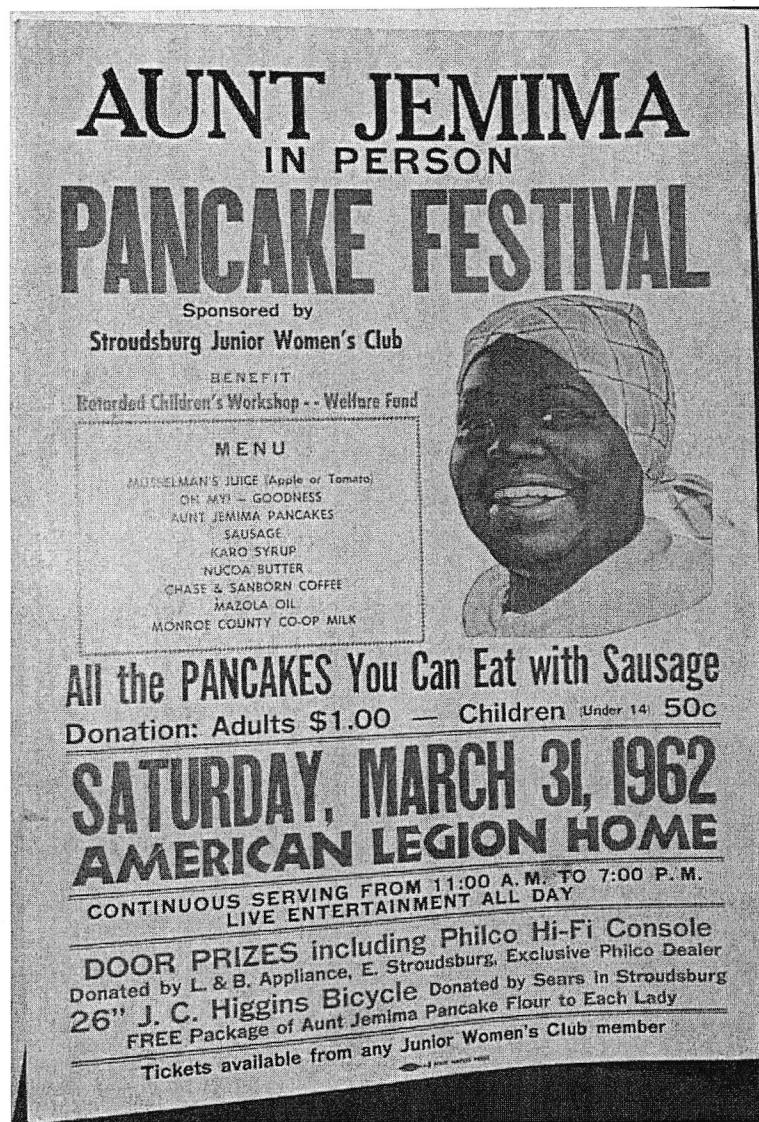
12 Plaintiffs asserts they represent a class around 15 family members that will include
13 additional parties such as Nancy Green's Grandchildren. If the Court has made contact with
14 Nancy Green's Grandchildren, Plaintiff graciously requests the Court to place both families in
15 contact so that we can strategize to respond together with all material evidence to be entered
16 into court record. Plaintiff cannot fully respond to the motion to dismiss because the Certified
17 Government Documents from within the Bureaus of Vital Statistics in Syracuse, and Illinois
18 that are needed concerning the early demise of Nancy Green and Aunt Deloris Hoffman; in
19 addition, to other documents generated by the U.S.P.T.O.
20

DATED: October 27, 2014

Respectfully Submitted,



Invoking Aunt Jemima Doctrine



Exh. 111

Invoking Aunt Jemima Doctrine



Here's Variation for
**AUNT JEMIMA
PANCAKES**

APPLE SPICE PANCAKES

Fold 1 cup chopped uncooked apples into Aunt Jemima batter before baking.

Serve with butter and topping mixture of 1/2 cup sugar and 2 tablespoons cinnamon.

BLUEBERRY PANCAKES

Fold 1 cup fresh or frozen blueberries into Aunt Jemima batter before baking.

Serve with butter and sugar or syrup.

BANANA PANCAKES

Add 1/2 cup sugar to Aunt Jemima Ready-Mix before adding milk. Slice 2 bananas and add to batter before baking.

Serve with butter and syrup as a dessert.

MINCEMEAT PANCAKES

Fold 2/3 to 1 cup mince meat into Aunt Jemima batter before baking.

Serve with hot syrup.

CORN PANCAKES

Fold 1 cup corn into Aunt Jemima batter before baking.

Serve with syrup, bacon or ham meat sauce.

Try these...
**PANCAKE
PARTNERS**



SAUSAGE PATTIES

Combine 1 lb. pork sausage meat, 1 cup Quaker or Mother's Oats (quick or old-fashioned, uncooked), 2 1/2 cup water, 1 teaspoon salt, 1/4 teaspoon pepper and 1/4 teaspoon sage. Shape into 16 patties and chill in refrigerator. Dip patties in beaten egg, then roll in fine dry bread crumbs. Pan fry slowly in small amount of fat about 15 minutes.

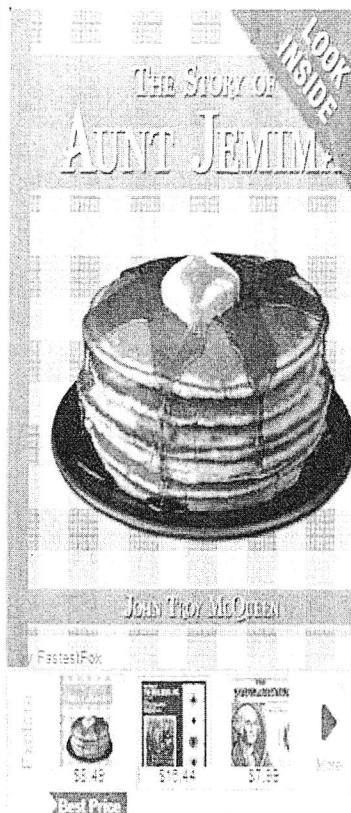
OVEN COOKED BACON

Place slices of bacon on a wire rack set in a shallow baking pan. Bake in a moderately hot oven (400°F.) 12 to 15 minutes or until lightly crisped.

BROILED FRANKFURTERS

Wrap a slice of bacon around each frankfurter. Secure with toothpicks. Place in pan and set 5 or 6 inches under broiler. Broil for 10 minutes until bacon is lightly crisped.

Exh. 112



The Story of Aunt Jemima Paperback

by John Troy McQueen (Author)

1 customer review

Paperback

\$10.79

7 Used from \$0.01

19 New from \$8.49

The story of Aunt Jemima is a biography about the life of the real Annie Short Harrington (1897-1955), written in picture book form. She was born in rural Marlboro County in the community now known as Wallace, South Carolina. The county seat is Bennettsville. The Short Family lived on the Peguese Plantation, where they picked cotton and worked in tobacco as sharecroppers. Her last surviving sibling, Lila Short Davis, provided most of the information about her through interviews. She died during the early 1990s. Her niece, Lenora Harrington Peguese also contributed to this story. Annie(also known as Ann and Anna) Short Harrington left the South going North to look for work, to support her five young children - three daughters and two sons. She found domestic work in the homes of wealthy people, including Governors. Syracuse, New York was where she eventually settled. **There she worked for a fraternity house at Syracuse University. Mrs. Harrington's fame was launched at a Fairground in the Syracuse, New York area in 1935. She was cooking pancakes there when she was discovered by the Quaker Oats Company, her picture drawn, and her image publicized all over America as Aunt Jemima.** She died in 1955 at the age of fifty-eight. Her remains were buried at Oakwood Cemetery in Syracuse, New York, at grave plot number 63, section H-4. Many of her relatives continue to live in the Wallace Community in South Carolina. They are proud of her niche in history.

[▲ Read less](#)

Exh. 122

CERTIFICATE OF SERVICE

1 FOR THE COUNTY OF]
 2 RAMSEY IN THE]ss.
 3 STATE OF MINNESOTA]

Case No.: 14-CV-6011

I, _____, HEREBY certify that I am over the age of 18 years old, and located at
1275 Lincoln Ave., Ste #1, St. Paul, MN 55105. I certify that I have placed a prepaid postage,
 true and complete original to the court and copies to the party(is) of record at the U.S. Postal
 Office located at Post Office on the date of October 2014, for this action of the following:

Motion Default + Memorandum + Exhibits 110, 111, 112, 113, 114, 115, 122

<p>7 Mr. Dean N. Panos 8 Jenner & Block LLP 9 PepsiCo, 10 The Quaker Oats Company 11 353 N. Clark Street, Chicago, IL 60654-3456 12 jenner.com 13 (312) 923-2765 TEL 14 (312) 840-7765 FAX</p>	<p>Stephanie A. Scharf Scharf, Banks & Maromor 333 West Wacker Drive Suite #450 Chicago, IL 60606 312-662-6999 Email: <u>scharf@scharfbanks.com</u></p>
<p>14 Almee E. Graham 15 John I. Grossbart 16 The Hillshire Brands Company, 17 Associate 18 Dentons U.S. LLP 19 233 South Wacker Drive 20 Suite #7600 21 Chicago, IL 606-6-6404</p>	<p>Special Agent in Charge Robert J. Holley Federal Bureau of Investigation 2111 W. Roosevelt Road Chicago, IL 60608 Phone: (312) 421-6700 Fax: (312) 829-5732/38 E-mail: Chicago@ic.fbi.gov</p>
<p>c/o Clerk United States District Court Northern District of Illinois Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604</p>	

I declare under the penalty of perjury under the laws of the State of Minnesota
 and/or N. Carolina that the above is true and correct.

Date: 10/20/14

Respectfully Submitted,

